



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order for emergency repairs, pursuant to section 33.

The landlords, the landlords' secretary and tenant J.B. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

The tenants testified that the landlords were each served with this application for dispute resolution via email on July 20, 2021. The serving email was entered into evidence. Landlord K.H. testified that he received the serving email approximately one week ago. Landlord M.W. testified that he received the serving email but could not recall on what date. I find that the landlords were sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with this application for dispute resolution as both landlords confirmed receipt.

Issues to be Decided

1. Are the tenants entitled to an Order for emergency repairs, pursuant to section 33 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2019 and is currently ongoing. The parties entered into a verbal tenancy agreement to rent the subject rental property, a shop and 10 acres of land at a monthly rent of \$3,000.00, payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenants to the landlord.

Tenant J.B. testified that the septic tank at the subject rental property is full and needs to be emptied. Tenant J.B. testified that the septic tank is filling up faster than normal because the septic lines need to be flushed and that the landlord has refused to flush the lines and empty the septic tank. Tenant J.B. testified that because the landlord refused to empty the septic tank and flush the lines, sewage has seeped into the lawn. Photographs of same were entered into evidence. Tenant J.B. testified that she is not certain on the current condition of the lawn because she is out of province helping family harvest crops.

Tenant J.B. testified that she informed the landlords in March of 2021 that the septic tank needed emptying. Both parties agree that the landlords hired professionals to empty and inspect the septic system. Tenant J.B. testified that the landlords accused her of flushing things down the septic system that are not permitted. Tenant J.B. testified that the septic company found that the septic field was not taking water and that the septic lines need to be flushed. The tenants entered into evidence a portion of a report from the septic company which states:

- Date scheduled: March 26, 2021
- Work Order Notes: Please pump out tank - size unknown backing up. PLEASE TAKE A FEW PICS AND SEND TO DISPATCH as they think renters are throwing things that should be [phone number] CC ON FILE
- Asset Notes: FIELD'S NOT TAKING WATER MAY START ON LINE FLUSH

Tenant J.B. testified that the landlords did not flush the lines. Tenant J.B. testified that the septic tank was full again on April 4, 2021 and that the landlords have refused to

empty it or flush the lines. Tenant J.B. entered into evidence an email to the landlords dated April 12, 2021 which states:

Hi [landlord K.H.]

Just wanted to inform you, the septic tank is full again. We will minimize our water usage again but this will need to be looked at and fixed. As the [septic report] did state it's the fields not taking water and not us throwing things down the toilet.

[M.] did stop by a few weeks ago stating to pump it out if it gets full as per [landlord M.W.'s] request but I would hate for you guys to turn it around and blame us for another issue.

Landlord K.H. responded to the above email on April 13, 2021. The April 13, 2021 email states:

Hi [tenant J.B.]

Well at least you will not have to deal with it anymore after you move.

Thanks for the update !

I hope you guys are starting to pack, you will only have 2 days to evacuate the premises after the court date if we win the case.

Tenant J.B. testified that the parties had a previous arbitration in which the landlords attempted to evict the tenants but were unsuccessful. Tenant J.B. provided the file number for the previous arbitration which is on the cover page of this decision. The June 29, 2021 decision arising from the previous arbitration confirms tenant J.B.'s above testimony. The parties agree that they have another hearing on October 28, 2021 regarding a 10 Day Notice to End Tenancy for Unpaid Rent. The file number for this future arbitration is on the cover page of this decision.

The tenants entered into evidence an email from the tenants to the landlord dated June 30, 2021 which states in part:

Also the septic tank has still not been addressed when I did let you know on March 24th and you did have a septic company come out and let you know it was the filed not taking water and the lines needed to be flush. I have also sent an email on April 12th letting you know it was full again but you have still not fixed the situation. We will need you to have this problem fixed as we will continue to

live here and can not have our animals drinking the human waste filling onto our lawn....

The landlords testified that the tenants are scam artists trying to get the landlords to pay the tenants money for unauthorized changes to the property. The landlords testified that the septic tank is not overflowing into the yard and that the septic tank does not need to be emptied or flushed. The landlords did not submit any documentary evidence for consideration.

The landlords testified that the tenants have not paid rent since May 2021 and are trying to scam the landlords. Tenant J.B. testified that rent has not been paid in full on the first day of each month. The landlords testified that the tenant moved out of the subject rental property on July 27, 2021 and had an unauthorized person move in.

Tenant J.B. testified that she has not moved out of the subject rental property and is out of province to help her family with a harvest but will be back at the subject rental property on October 28, 2021. Tenant J.B. testified that her nephew is staying at the subject rental property while she is away to take care of her livestock.

Analysis

I find, on a balance of probabilities, that this tenancy has not ended, and that while the tenants are currently out of province, they have not moved out. This finding is supported by tenant J.B.'s testimony and the tenants' repeated efforts to continue this tenancy by disputing all of the landlords' notices to end tenancy.

Section 33(1) of the *Act* states:

- 33** (1) In this section, "emergency repairs" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,

- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

Pursuant to section 33(1)(c)(ii) of the *Act*, I find that seeping sewage and a full sewage tank is an emergency repair.

Based on tenant J.B.'s testimony, the emails and photographs entered into evidence, I find, on a balance of probabilities, that the septic tank at the subject rental property is full and leaching into the yard. I find the landlords' unsubstantiated testimony that the septic tank is not full to be unconvincing given the email communications between the parties in April of 2021 in which the tenant informed the landlords of the full sewage tank and the landlords responded, "Well at least you will not have to deal with it anymore after you move.".

I find that it is likely that the landlords are not addressing the sewage problems because the tenants have not paid full rent on the first day of each month and because of the landlords' ongoing attempts to evict the tenants. I find that the failure of the tenants to pay rent and any other issues between the parties does not diminish the landlords' obligation to repair and maintain the subject rental property as set out in section 32 of the *Act* and Residential Tenancy Policy Guideline #1.

Section 32 of the *Act* states:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Branch Policy Guideline #1 states:

The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.

I find that the landlords have not proved that the septic issues were caused by the tenants' negligence. Pursuant to Residential Tenancy Policy Guideline #1, I find that it is the landlords' responsibility to empty and maintain the septic tank and field.

I find that in failing to maintain, repair and empty the septic tank and lines, the landlords have breached section 32 of the *Act*. As a result, I order the landlords to take immediate action to flush the lines and empty the sewage tank.

If the repair work is not completed by August 31, 2021, I find that pursuant to section 65 of the *Act*, the tenants are entitled to receive a rent reduction in the amount of \$250.00 per month effective September 1, 2021 until the ordered work is completed.

Conclusion

The landlords are ordered to flush the septic lines and empty the septic tank at the subject rental property.

If the above work is not completed by August 31, 2021, the tenants are granted a rent reduction in the amount of \$250.00 per month from September 1, 2021 until the work has been completed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 13, 2021

Residential Tenancy Branch